

Senate Standing Committee on Education and Employment

QUESTIONS ON NOTICE Additional Estimates 2015 - 2016

Agency - Fair Work Commission

Department of Employment Question No. EMSQ16-000228

Senator McKenzie provided in writing.

Question

FWC - Royal Commission Referrals – CFMEU

The Heydon Royal Commission has made a number of referrals to various civil and criminal agencies arising from matters uncovered by the Royal Commission.

The Royal Commission referred to the FWC Andrew Ferguson of the CFMEU for breaches of duties under section 286.

- What steps have been taken in relation to this referral?
- When does the FWC anticipate this investigation will be finalised?
- Was the FWC aware of the allegations now being investigated before they were highlighted by the Royal Commission?
- If the FWC was aware, what was done before the referral?
- If the FWC was aware, why wasn't anything been done before the referral?
- If the FWC was not aware, should the FWC have been aware?

Answer

1. By letter dated 22 December 2015 the Trade Union Royal Commission (TURC) advised the Fair Work Commission (FWC) that it was proposing to refer a number of matters to the FWC including:
 - Whether proceedings should be commenced against Andrew Ferguson for a possible breach of section 285 of the *Fair Work (Registered Organisations) Act* 2009;

The letter was not received by the FWC until 1 February 2016 because it had been incorrectly addressed. The supporting material in relation to Mr Ferguson (more than 2,800 pages) was received on 28 January 2016. The FWC has identified that documents relevant to the referral were not provided and inquiries have commenced to seek provision of those documents from the TURC.

Planning, scoping, document management and increasing resources to deal with all the referrals is underway. This is a very significant undertaking. As of 29 February 2016, more than 60,000 pages have been provided to the FWC. Each document that may evidence contraventions of the *Fair Work (Registered Organisations) Act* 2009 (the RO Act) and fall within FWC's jurisdiction to investigate or otherwise bring proceedings in respect of, needs to be examined. This includes identifying how the material was obtained by the TURC. This is because any evidence (oral or documentary) obtained compulsorily by the TURC from a person may not be used in evidence in civil proceedings against that person. Any such material could not be used by the FWC to decide whether, for example, to commence proceedings in respect of any contraventions.

2. It is not presently possible to anticipate if the referral will be the subject of an investigation or a timeline to determine the matter.
3. No. A preliminary overview of some of the supporting material indicates that the conduct relevant to the referral commenced in about mid 2005. The RO Act does not provide power to the FWC to inquire or investigate the conduct of registered organisations unless it has received credible information that organisations are not or might not be complying with the law or rules relating to their finances or financial administration.
4. See response to 3.
5. See response to 3.
6. A preliminary overview of some of the supporting material indicates that the conduct relevant to the referral commenced in about mid 2005 and any contraventions would fall within *Schedule 1B (RAO Schedule), Workplace Relations Act 1996*. The RO Act does not provide power to the FWC to inquire or investigate the conduct of registered organisations unless it has received credible information that organisations are not or might not be complying with the law or rules relating to their finances or financial administration. The FWC is not aware of any fact or circumstance which indicates that it should or could have been aware of any of the referred conduct or information.